Report on Implementation of Section 11 by the Federal Communications Commission

Commissioner Harold W. Furchtgott-Roth

December 21, 1998

Executive Summary

The Telecommunications Act of 1996 included a section on "Regulatory Reform." Codified at Section 11 of the Communications Act of 1934, as amended, this provision requires the FCC to review, every two years, all of its rules that apply to telecommunications service providers and determine whether any are no longer necessary in the public interest. Section 11 then directs the Commission to repeal or modify unnecessary rules.

Although the FCC has made significant progress on Section 11, the official 1998 review had shortcomings. In particular, the Commission did not clearly review all of the rules required under Section 11, did not establish clear standards by which rules are evaluated, and did not produce a full written record of the review. At the same time, however, a few law student interns performed a model review which demonstrated how future Section 11 reviews could be conducted by the FCC. In any case, the full Commission should begin planning for the year 2000 biennial review very soon; this report includes specific procedural suggestions for that review.

Conducting a biennial review is no easy task. All those involved with this year's review worked very hard and, in one sense, even harder than necessary. With similar hard work, as well as strict attention paid to the requirements of Section 11, the shortcomings of the 1998 review certainly can be corrected for the year 2000 review.

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I. BACKGROUND

After over 60 years of modest changes,[1] U.S. telecommunications law was dramatically rewritten by Congress in the Telecommunications Act of 1996.[2] With its twin purposes "to promote competition and reduce regulation,"[3] the 1996 Act was greeted with considerable fanfare and great expectations.[4] Various events since then, including the issuance of many voluminous Federal Communications Commission orders implementing the legislation and judicial reversals of

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[1] These six decades followed the Communications Act of 1934, ch. 652, 48 Stat. 1064.

[2] Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act").

[3] *Id. at* Preamble.

[4] At the signing ceremony, President Clinton declared that "[t]his law is truly revolutionary legislation that will bring the future to our doorstep" and that "[t]oday, with the stroke of a pen, our laws will catch up with the future." Remarks by the President in Signing Ceremony for the Telecommunications Act Conference Report (Feb. 8, 1996), <http://www1.whitehouse.gov/WH/EOP/OP/telecom/release.html> (visited Nov. 17, 1998).

a few of these orders,[5] have caused many to question the FCC's ability to implement Congress' deregulatory intent and some to question the deregulatory depth of the 1996 Act itself.[6]

In at least one part of the 1996 Act, however, Congress' deregulatory mandate is unquestionable. That part, codified at Section 11 of the Communications Act of 1934, as amended,[7] is as follows:

> SEC. 11. REGULATORY REFORM.
>
> (a) BIENNIAL REVIEW OF REGULATIONS.--In every even-numbered year (beginning with 1998), the Commission--
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> (1) shall review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and
>
> (2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.
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> (b) EFFECT OF DETERMINATION.--The Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest.[8]

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[5] *See, e.g.*, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom. Iowa Utils. Bd v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted*, 66 U.S.L.W. 3484 (U.S. Jan. 26, 1998) (No. 97-826); *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996); *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 12460 (1997); *further recon. pending*.

[6] *See, e.g., Huber, et al., The Telecommunications Act of 1996: Special Report* (Aspen Publications, 1996) ("[t]he hodge-podge of overlapping and conflicting regulatory regimes . . . is still largely in place.").

[7] 47 U.S.C. § 161.

[8] Congress also directed the Commission to review all of its ownership rules. Specifically, Subsection 202(h) of the Telecommunications Act of 1996 provides:

> (h) Further Commission Review. -- The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act and shall determine whether any such rules

The language of Section 11 is clear. Yet, given the FCC's occasional problems implementing the 1996 Act, this language is worthy of analysis. Of course, when interpreting any statute, the Commission "should always turn first to one, cardinal canon before all others . . . that a legislature says in a statute what it means and means in a statute what it says."[9] The FCC should be particularly mindful of this canon because reviewing courts "are empowered to overturn an agency interpretation when the interpretation conflicts with the plain meaning of a statute."[10]

Section 11 has two key components. In both, Congress assigned the Section 11 responsibilities to the Commission. Thus, only the full Commission, not the chairman or staff by themselves, has authority to conduct the review, make determinations, repeal or modify rules, or delegate its Section 11 responsibilities.

In the first component, Subsection 11(a), the Commission is directed to conduct a biennial review of all of its telecommunications regulations and make a determination as to whether each is in the public interest. Three key words in Subsection 11(a) are "review," "all," and "determine."

> are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

1996 Act, footnote 2, *supra*, *at* § 202(h). The Commission has sought general comment on mass media ownership issues, 1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 98-35, *Notice of Inquiry* (released Mar. 13, 1998), ("Broadcast Ownership NOI") and plans to issue several notices of proposed rulemaking on these issues soon. Another clearly deregulatory part of the 1996 Act was codified at Section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160. In Section 10, Congress directs the FCC to forbear from applying any (with a few exceptions) provision of the Act or any of the agency's rules to telecommunications carriers or services if the Commission determines enforcement is not necessary (1) to ensure that charges, practices, classifications or regulations for such carrier or services are just and reasonable and (2) for the protection of consumers, and that forbearance would be consistent with the public interest.

[9] *Connecticut Nat'l Bank v. Germain*, 112 S.Ct. 1146, 1149 (1992).

[10] *Iowa Utilities Bd v. FCC*, footnote 5, *supra at* p. 793, *citing Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842-843 (1984).

The Commission is required every two years to affirmatively "*review*" not "some" but, rather, "*all*" of its current rules that apply to the operations or activities of telecommunications service providers.[11] On the other hand, the FCC need only "*determine*" whether individual rules are necessary in the public interest as a result of meaningful economic competition between service providers. The agency need not, therefore, repeal or modify any rules as part of, or concurrently with, the Subsection 11(a) biennial review. To reiterate: every two years the Commission must review all of its telecommunications rules and make public interest determinations.

In the second component, Subsection 11(b), Congress directs the Commission to repeal or modify any unnecessary regulations. Either of these actions -- repeal or modification -- requires a reasoned analysis in a notice and comment rule making proceeding pursuant to the Administrative Procedure Act.[12] Yet neither of these actions is part of the biennial review of Subsection 11(a) and, thus, need not be accomplished within the year of the biennial review.

Of course, the FCC lacks authority to adopt regulations that are *not* in the public interest, so at first glance it might seem odd that Congress directed the Commission to repeal or modify rules that are not in the public interest. There are at least three reasons Congress might have done so. First, Section 11 makes clear that the agency is to repeal or modify rules that are not "necessary" in the public interest. A rule that is arguably in the public interest, but not *necessary* in the public interest must be eliminated or modified. Put another way, the Commission must affirmatively determine that a rule is necessary in the public interest; otherwise, it must be

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[11] Colloquially stated, Section 11(a) establishes a process for a "attic-to-basement review of all regulations on a two year cycle." 141 Cong. Rec. S7881 (Jun. 7, 1995) (statement of Sen. Lott).

[12] *See* 5 U.S.C. § 553 (1988) (establishing informal rulemaking procedures). *See also Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 41-4 (1983) (holding that an agency changing course must supply a reasoned analysis for the change).

repealed or modified. Second, Congress recognized that some rules were promulgated long ago, *i.e.*, before there was meaningful economic competition in the relevant markets. These older rules may have been in the public interest at the time they were adopted but, now, may *no longer* be necessary in the public interest. Finally, there simply may be FCC rules that actually never were in the public interest, even when they were adopted. Clearly, such rules should be repealed or modified as soon as possible.

Thus, even though the FCC already had the authority to eliminate rules not in the public interest, Section 11 is novel because, in Subsection 11(a), it mandates a new process by which the agency must affirmatively review all of its rules that apply to telecommunications service providers and, in Subsection 11(b), it clarifies that it a rule cannot merely be arguably "in the public interest"; it must actually be *necessary* in the public interest.

Some parties recently have argued to the FCC that there are sound policy reasons (many of which I support) for the Commission to conduct such a review and then repeal or modify our rules.[13] It is not this agency's place, however, either to criticize or to applaud the policy decisions already made for us by Congress. We simply must obey the clear instructions Congress gave us in Section 11.

Although such deregulatory policy rationales do nothing to inform *whether* the FCC should conduct a biennial regulatory housecleaning, understanding such rationales could help us estimate the price of misfeasance. As described below, the cost of not fully conducting our first

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[13] *See* United States Telephone Association, *Petition for Rulemaking -- 1998 Biennial Regulatory Review* (filed Sep. 30, 1998) ("USTA Petition") at pp. 3-16.

"attic to basement" review in 1998 is two years of delay in a rapidly changing industry and, quite possibly, billions of dollars in American consumer welfare.

The stakes conceivably could go well beyond the FCC and the industries it regulates. Obviously, where agencies have the discretion to regulate, they also may deregulate. And if they may by discretion deregulate, they also may periodically by discretion review their rules to determine what to deregulate. In contrast, the Section 11 review is not a discretionary exercise; under Section 11 the FCC was *ordered* to deregulate. If this agency were to disobey Congress' clear direction, similar deregulatory directives might never be enacted for (or faithfully implemented by) other agencies.

II. OFFICIAL 1998 BIENNIAL REVIEW

On November 18, 1997, the FCC staff released a public notice announcing early commencement of the official 1998 biennial review.[14] This notice said the 1998 biennial review would be "comprehensive" and would have a scope "broader than required by the 1996 Act," and quoted Chairman Kennard as saying the review "will help ensure that we regulate only when necessary and that we do so in a common sense manner that will not be overly burdensome to the industries we regulate."[15] Two and a half months later, on February 5, 1998, a second notice was released containing "a list of 31 proposed proceedings to be initiated as part of the 1998 biennial regulatory review."[16] According to this second notice, this list "was compiled following a broad,

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[14] "1998 Biennial Review of FCC Regulations Begun Early; to be Coordinated by David Solomon," *Public Notice*, (Nov. 18, 1997) ("First Public Notice") (attached as Appendix A) *at* p. 1.

[15] *Id*.

[16] "FCC Staff Proposes 31 Proceedings as Part of 1998 Biennial Regulatory Review," *Public Notice*, Rpt No. GN 98-1 (Feb. 5, 1998) ("Second Public Notice") (attached at Appendix B) *at* p. 1.

comprehensive internal review of all existing FCC regulations," and reiterated the point that this first biennial review "presents an excellent opportunity for a serious top-to-bottom examination of all the Commission's regulations, not just those statutorily required to be reviewed."[17] Then, on August 6, 1998, a third notice announced that the Commission to date had "begun 23 proceedings as part of its 1998 Biennial Regulatory Review," reiterated that the specific proceedings "were developed after a comprehensive internal FCC review of all Commission rules," and said that the review had been broadened "to include all FCC rules."[18] At the date of the present report, the FCC has initiated 31 proceedings and has issued four orders modifying or repealing various rules. A current list of biennial review items can be found on the FCC's Internet Web site.[19]

Four themes appear in an examination of these public notices and the substantive proceedings initiated by the Commission. First, it appears that the staff carrying out the official review believed (or at least initially believed) that Section 11 required the FCC to complete rule making proceedings pursuant to the review during 1998. In other words, and contrary to the clear structure of Section 11, they seem to have believed that not only the requirements of Subsection 11(a), but also those of Subsection 11(b), must be met during the year of the biennial review. This probably explains why the staff spent only two and a half months to make the determinations required under Subsection 11(a) when there were another eleven months to complete the task. In one sense, this effort to complete Subsection 11(a) determinations in less

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[17] *Id.*

[18] "FCC Announces Significant Progress on 1998 Biennial Regulatory Review," *Public Notice*, Rpt No. GN 98-11 (Aug. 6, 1998) ("Third Public Notice") (attached at Appendix C) *at* p. 1. It is true that some of the rules addressed by the 23 proceedings do not involve "the operation or activities of any provider of telecommunications service," as stipulated in Subsection 11(a)(1). *See* footnote 25, *infra*.

[19] *See* < http://www.fcc.gov/biennial > (visited Dec. 21, 1998).

than a fifth of the available time is commendable. Yet this effort to exceed the temporal requirements of Section 11 could be a key reason why the FCC has not fully met, as described below, the substantive requirements of Subsection 11(a).

The second theme apparent in the official 1998 review is the Commission's reliance on informal, ad hoc public input for making Subsection 11(a) determinations. The Second Public Notice, for example, describes the "informal input from the industry and the public" obtained through "public forums and ongoing brown bag lunches with the practice groups of the Federal Communications Bar Association."[20] Although I certainly agree that public participation is important for most FCC actions, and required by the Administrative Procedure Act for rulemaking,[21] including actions to repeal or modify rules under Subsection 11(b), it simply is not a substitute for the internal rule-by-rule FCC review and determinations required under to Subsection 11(a).

Third, the Commission apparently did not establish, *a priori*, uniform principles for making public interest determinations under Subsection 11(a)(2). Granted, in one notice of proposed rulemaking in the official 1998 biennial review, the Commission reprinted an analytical framework that the Office of Plans and Policy ("OPP"), the Chief Economist, and the Competition Division of the Office of General Counsel provided to the bureaus and the Office of Engineering

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[20] Second Public Notice, footnote 16, *supra*, *at* p. 1.

[21] *See* 5 U.S.C. § 553 (1988).

and Technology ("OET") in late 1997 for their use in connection with the review.[22] In a written separate statement to the Broadcast Ownership NOI,[23] I suggested similar analysis principles:

> Although today's item does not spell out what it means to assess whether a regulation is 'necessary in the public interest as the result of competition,' as the statute requires, it seems to me that in analyzing that issue it would be useful for commenting parties to consider: (i) the original purpose of the particular rule in question; (ii) the means by which the rule was meant to further that purpose; (iii) the state of competition in the relevant market at the time the rule was promulgated; (iv) the current state of competition as compared to that which existed at the time of the rule's adoption; (v) and, finally, how any changes in competitive market conditions between the time the rule was promulgated and the present might obviate, remedy, or otherwise eliminate the concerns that originally motivated the adoption of the rule."[24]

In my view, the OPP Framework is excellent. But this framework was not actually applied by all the bureaus and offices working on the official review. Indeed, neither it nor any other consistent review standard was applied to all of the FCC's rules.

This leads me to the fourth, and most problematic, aspect of the Commission's official 1998 biennial review: the apparent failure of the FCC to review *all* of its rules that apply to the operations or activities of telecommunications service providers and make determinations as to whether each and every one of these rules is necessary in the public interest as a result of

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[22] *See* 1998 Biennial Regulatory Review -- Petition for Section 11 Biennial Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CC Docket No. 98-177, *Notice of Proposed Rulemaking* (released Nov. 24, 1998) ("SBC NPRM") *at* p. 2. The complete text of this analytical framework ("OPP Framework") is attached at Appendix D.

[23] *See* footnote 8, *supra*.

[24] *Id. at* Separate Statement of Commissioner Harold Furchtgott-Roth. Subsequently, the full Commission sought public comment based on this framework in two rulemaking proceedings. *See* Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services, *Memorandum Opinion and Order and Notice of Proposed Rule Making*, WT Docket No. 98-100 (released Jul. 2, 1988) at para. 115 (seeking comment on a Section 10 forbearance petition). *See also* 1998 Biennial Regulatory Review -- Spectrum Aggregation Limits for Wireless Telecommunications Carriers, *Notice of Proposed Rulemaking*, WT Docket No. 98-205 (released Dec. 10, 1998).

meaningful economic competition. In short, contrary to the unequivocal statements in the Second Public Notice and Third Public Notice, the Commission has not yet met the statutory requirements of Subsection 11(a).

For those who might be inclined to believe that the "comprehensive" review of "all" rules actually took place, several questions should be asked. For example, is it plausible that, out of our hundreds and hundreds of rules, fewer than forty individual rules or rule parts are no longer necessary in the public interest?[25] And how could such a review of "all" our rules take only two and a half months?

In addition, despite the serious nature of the review that should have taken place and the public interest determinations that were to have been made, there is no documentation of the review. Surely the record of a task of this magnitude would cover thousands of pages. I have asked to see these documents but they apparently do not exist.[26]

In fairness, I recognize there was a concerted effort to conduct a limited review in 1998. As noted above, the apparent desire to complete the Subsection 11(b) requirements in the year of the biennial review demonstrated the dedication of all those involved with the project. And, of

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[25] Some of these rules have nothing to do with "the operations or activities of any provider of telecommunications service," as stipulated by Subsection 11(a)(1). One proceeding, for example, addresses rules for amateur radio, 1998 Biennial Regulatory Review -- Amendment of Part 97 of the Commission's Amateur Service Rules, *Notice of Proposed Rule Making*, WT Docket 98-143 (released Aug. 10, 1998). Another addresses radio frequency lighting, *see* 1998 Biennial Regulatory Review -- Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices, *Notice of Proposed Rule Making*, ET Docket No. 98-42 (released Apr. 9, 1998), Separate Statement of Commissioner Harold Furchtgott-Roth ("The issue here is better light bulbs, not broad regulatory reform. . . . By its terms, Section 11 does not apply to regulations governing RF emissions from light bulbs.")

[26] A request for these documents could be filed by an outside party under the Freedom of Information Act ("FOIA"), codified at 5 U.S.C. § 552 (1988), *see also* 47 C.F.R. § 0.506 (1997).

course, I recognize that meeting all the requirements of Section 11 is a difficult task. The Commission as a whole, however, can and should do a much better job in the year 2000.

As for the specific proceedings initiated under the FCC's official review, I have been very supportive of the Commission's efforts to tackle the individual rules or rule parts involved. Indeed, in the written separate statements I have issued with nearly all of these FCC actions, I have said that, "in my view, any reduction of unnecessary regulatory burdens is beneficial," and to that extent, each action "is good and I am all for it."[27] Yet, consistent with the analysis described above, I have made clear in my written statements that these actions "should not, however, be mistaken for complete compliance with Section 11 of the Communications Act," and have encouraged parties to assist the Commission's internal review by submitting "specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a)."[28] Perhaps out of a similar frustration with the scope of the agency's internal review, several parties outside the FCC have submitted petitions for review of specific rules.[29] Outside parties actually may be able to force the FCC to comply with Section 11.[30]

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[27] *See, e.g.*, 1998 Biennial Regulatory Review -- Testing New Technology, *Notice of Inquiry*, FCC 98-118, CC Docket No. 98-94, Separate Statement of Commissioner Harold W. Furchtgott-Roth (Jun. 11, 1998) (attached at Appendix E).

[28] *Id*.

[29] *See, e.g.*, USTA Petition, footnote 13, *supra*, SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, *Petition for Section 11 Biennial Review* (filed May 8, 1998), and Personal Communications Industry Association, Letter, *Section 11 Wireless Telecommunications Bureau Biennial Review Removal or Streamlining of Regulations* (filed Jul. 31, 1998).

[30] Although I certainly hope this will not be necessary for the 2000 biennial review, a legal cause of action -- that is, a basis for outside parties to petition a court to force the FCC to act -- is available under Section 706 of the APA. 5 U.S.C. § 706. In that provision, federal courts are directed to "compel agency action unlawfully withheld or unreasonably delayed, *id. at* § 706(1), and, obviously, the FCC has unlawfully withheld action on the biennial

So what is the price of the FCC's delay? Unfortunately, the Commission's very limited Subsection 11(a) review in 1998 could cost Americans billions of dollars in consumer welfare.[31] Just consider what two years means to this industry: every computer and other communications device based on integrated circuit chips will run well over twice as fast, and demand for Internet capacity will have increased by a factor of at least ten and by a factor of as much as 250.[32] Our rules are becoming more outdated at a frightening pace, and certainly much faster than in the entire history of telecommunications regulation. For all of these reasons, the FCC should be racing against the clock, trying desperately to get out of the way of technological progress and remove anachronistic rules that are "no longer necessary."

The immediate effect on the industry should not be the Commission's only concern. Telecommunications no longer is a sleepy backwater industry; telecommunications and computing

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review as required under Subsection 11(a). Also available, but with somewhat less certainty, would be a writ of mandamus from a federal court to the FCC directing that a lawful Subsection 11(a) review must be conducted without further delay. *See* 28 U.S.C. § 1651 (1998). The D.C. Circuit has delineated factors to assess claims of agency delay including consideration of "Congressional timetables in the agency's enabling statute." *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 78-79 (D.C. Cir. 1984). Because Congress clearly established a timetable in the Commission's enabling act that the agency did not obey, mandamus could issue to forestall further delay.

[31] Indeed, a loss of single-digit billions of dollars is a conservative estimate:

> The social costs of regulatory constraints that artificially increase costs and fail to provide meaningful consumer benefits and/or protections can be staggering. This is especially the case in a rapidly changing and dynamic telecommunications environment. An egregious example of the harms that can result from delay and not permitting market forces to work is the licensing of cellular telecommunications. The 10 to 15 year regulatory delay in licensing systems is estimated to have cost society more than $86 billion or about 2 percent of GNP in 1983 when cellular service began.

Schmalensee and Taylor, "Need for Carrier Access Pricing Flexibility in Light of Recent Marketplace Development" (1988), *quoting* Rohlfs, *et al*., Estimate of the Loss to the United States Caused by the FCC's Delay in Licensing Cellular Telecommunications," NERA Report (Nov. 4, 1991)

[32] *See* UUNet, "The Internet at Work: Internet Trends and Opportunity," <http://www.uunet.be/channel/company/sld004.htm> (visited Nov. 23, 1998).

have become the very backbone of America's Information Age economy. And, yet, Congress' clear direction in Section 11 to deregulate the industry systematically is not given our full attention.

Unfortunately, the FCC has no clear idea how much its regulations cost American consumers. Not only do its published orders rarely acknowledge that its rules have costs as well as benefits, the Commission makes no attempt to document the costs of its regulations.[33] Thus, not only has the FCC not fully met Congress' clear deregulatory mandate in Section 11, we are not aware how much our limited efforts have cost the United States.

III. MODEL BIENNIAL REVIEW

When the FCC issued the Second Public Notice in early February, 1998, I became concerned that the Commission might not be conducting the 1998 biennial review fully in accordance with the requirements of Subsection 11(a).[34] There simply was no way an internal review of all of our rules that apply to telecommunications service providers could have been completed in two and a half months. At the time, it was not too late to reorient and save the 1998 review. Unfortunately, there was little support at the FCC for reviewing all of our rules in accordance with Subsection 11(a) and, accordingly, in the early spring, I asked my staff to

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[33] *See Survey of Federal Agencies on Costs of Federal Regulations*, Staff Report, Committee on Commerce, U.S. House of Representatives, Committee Print 105-A (1997) *at* pp. 92-93. (In response to extraordinarily detailed questions about the costs -- including foregone profits -- of its regulations and about its procedures for ascertaining and evaluating such costs, the FCC's two page response merely discussed auction revenues, the agency's budget, and application fees. The Commission simply was not able to even discuss the costs of its regulations on industry and consumers.)

[34] *See* "F.C.C. Rule Review Assailed By a New Republican Member," *New York Times*, Feb. 6, 1998, p. C2.

conduct a model review to demonstrate how the entire FCC could conduct biennial reviews under Subsection 11(a) beginning in the year 2000.

For this model review, as well as for helping with other day-to-day activities in my office, I hired a team of legal interns who were students at various law schools around the country.[35] This dedicated team attacked the project with remarkable intelligence, creativity, and vigor. They were able, with guidance from members of my permanent staff of legal advisors, to demonstrate that a systematic review of all FCC rules is feasible. Indeed, given their very limited time on the project, their small number (about ten part-time interns compared to the hundreds of full-time FCC employees), their relative inexperience with specific rules, and their minimal interaction with outside parties on the subject of the review, the interns' goal was only to create a model for future biennial reviews, not to actually analyze each and every one of the FCC's rules.[36] Of course, I also asked them to bring to my attention any specific rules they considered no longer necessary in the public interest and, therefore, ripe for repeal or modification by the Commission.

Although Subsection 11(a) clearly defines the scope of the biennial review, it does not specify a method. The first task for the model review, therefore, was to adopt an analysis methodology. In general, the methodology employed by the model review team closely followed the structure of Subsection 11(a) and incorporated principles to give practical meaning to the term "public interest."

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[35] *See* Appendix F for a list of the interns.

[36] Not surprisingly, their efforts attracted attention. *See, e.g.*, "Furchtgott-Roth's Shadow FCC," *Broadcasting and Cable Magazine* (Aug. 17, 1998) *at* p. 14 (describing how interns are conducting a model review "that real regulators can use as a reference when they conduct the next regulatory review in 2000" and how the interns' "goal is to create a blueprint for a full review and not to actually analyze each rule").

More specifically, the interns examined a series of the FCC's current rules, *e.g.*, Sections 22.901 - 22.967,[37] and first decided -- rule by rule -- whether the individual rule applies "to the operations or activities of any provider of telecommunications service."[38] The model review team then determined -- again, rule by rule -- whether the regulation "is no longer necessary in the public interest as the result of meaningful economic competition between providers of [telecommunications] service."[39] To make this public interest determination, the model review team applied a fairly straightforward cost-benefit analysis which entailed research into the history of the record, as well as current conditions, in order to estimate the costs and benefits of the rule. In other words, the model review team applied principles along the lines of those I suggested in a written separate statement to the Broadcast Ownership NOI and which were endorsed by the Commission in two proceedings.[40]

It was assumed that a rule is in the public interest only if its benefits significantly exceed the costs. A similar approach was supported by the full Commission in one of the official biennial review notices of proposed rule making. In that notice, the FCC sought comment on the statement that, "as a general matter . . . we will not maintain a regulation pursuant to the section 11 public interest analysis where we determine that the costs of the regulation exceed the benefits."[41] Regrettably, the Commission has not included this language in subsequent biennial

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[37] 47 C.F.R. §§ 22.901 - 22.967 (1997).

[38] 47 U.S.C. § 161(a)(1).

[39] *Id. at* § 161(a)(2).

[40] *See* footnotes 8 and 24, *supra*.

[41] 1998 Biennial Regulatory Review -- Elimination of Part 41 Telegraph and Telephone Franks, *Notice of Proposed Rule Making*, FCC 98-152, CC Docket No. 98-119 (released Jul. 21, 1998) ("Franks NPRM") at para.

review actions. I question, however, how a rule could be in the public interest if its costs exceed its benefits. Fortunately, in some of the most recent official 1998 biennial review notices of proposed rulemaking, the Commission is at least requesting "information on the costs and benefits of the rules at issue in the proceeding and of our proposed modifications."[42]

One party has suggested that we adopt the principle that "duplicating the oversight or jurisdiction of other government agencies should be avoided."[43] Although I certainly agree with the general proposition,[44] the cost-benefit analysis will take care of this issue: redundant oversight has, by definition, no benefits, while the delays to industry and consumers can be very costly.

Although it was assumed in the 1998 model review that a rule is not in the public interest if its benefits do not significantly outweigh its costs, the inverse construction is not necessarily true: a rule is not necessarily in the public interest under Subsection 11(a) if its benefits significantly outweigh its costs. In other words, the cost-benefit analysis is only a first order approximation. Indeed, because Subsection 11(a) was adopted as part of an act especially intended to "reduce regulation"[45] and itself is in a section entitled "Regulatory Reform," it certainly would be reasonable, if not necessary, to construe the "public interest" determinations in

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19. This notice also noted that "many costs and benefits of regulation may be difficult, if not impossible to quantify." *Id*. Although I agree that quantification may be difficult in some cases, that difficulty is no excuse for failing to consider the costs and benefits of regulation.

42 *See, e.g.*, SBC NPRM, footnote 22, *supra, at* para. 15.

43 USTA Petition, footnote 13, *supra, at* p. 19.

44 *See, e.g.*, Application For Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation to SBC Communications, Inc.; *Memorandum Opinion and Order*, CC Docket No. 98-25. (released Oct. 23, 1998), Separate Statement of Commissioner Harold Furchtgott-Roth.

45 1996 Act, footnote 2, *supra, at* Preamble.

Subsection 11(a)(2) to require the FCC to presume a heavy burden against maintaining regulations.[46] Thus, the Subsection 11(a)(2) public interest analysis should favor a reduction of rules. More specifically, in order to meet the deregulatory goals of the Telecommunications Act, it may not be in the public interest to maintain an individual rule even if its benefits slightly outweigh its costs. In sum, for the greater overall good of deregulation, Congress may have directed the Commission to repeal or modify rules that, on an individual basis, arguably have more benefits than costs. As discussed below, the commissioners will need to determine and annunciate the meaning of the Subsection 11(a)(2) public interest standard in the official year 2000 biennial review.

Importantly, the 1998 model review team also kept a detailed record of their analyses because, as described at length above, it is clear that Subsection 11(a) requires us to make a determination with respect to every rule and surely such critical public interest determinations require a written record. This is not to say, however, that the Commission was wrong when it stated in one notice of proposed rulemaking in the official 1998 biennial review, that "[t]he statute does not require a rulemaking determination by the Commission with respect to every rule."[47] Indeed, I agree that there is no statutory requirement under Subsection 11(a) that the FCC release for public notice and comment, and then make formal findings on all of our Rules. It simply is not

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[46] *See, e.g., Kokoszka v. Beford*, 417 U.S. 642 (1974) ("When interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . . and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the legislature." *Id. at* 650). My fellow Commissioner Michael K. Powell has advocated a similar presumption against regulation under Section 10. *See* Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services, *Memorandum Opinion and Order*, WT Docket No. 98-100 (released Jul. 2, 1998), Separate Statement of Commissioner Michael Powell, Dissenting in Part.

[47] SBC NPRM, footnote 22, *supra*, *at* p. 4.

plausible, however, that the internal, rule-by-rule determinations required under Subsection 11(a) could be made without significant documentation.

The 1998 model review team documented the model review in an electronic database. Although there is no unique correct format in which to compile such a database, the model review team believed that the database at least should include, for each rule, information on the rule's history, its benefits upon adoption, its current benefits and costs, and the review team's recommendation on whether the rule should be maintained, repealed, or modified.[48]

An obvious limitation of the 1998 model review was the limited time, number, and specific, rule-by-rule experience of the review team. Another a major shortcoming of this model review was the lack of interaction with outside parties. Although ex parte meetings with such parties, *e.g.*, companies, industry trade associations, and consumer groups, would have facilitated the review, the limited time and resources of the model review team precluded such interaction.

Despite these limitations, the model review team was able to identify several current FCC rules that they believe are ripe for repeal or modification, as well as many that they believe should be maintained. In their report,[49] for example, the model review team recommended that, based on their rule-by-rule analysis of Part 22, Subpart H of the FCC's Rules, Subsection 22.937 should be repealed, Subsection 22.943 should be modified, and Subsection 22.951 should be maintained. Specifically, the model review team made the following recommendations:

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[48] An example record from the 1998 model review team's database is attached as Appendix G.

[49] Report of the 1998 Model Review Team, Office of Commissioner Harold Furchtgott-Roth (Nov. 30, 1998). The complete report -- a database of reviewed rules -- is available for inspection in my FCC offices. A list of rules reviewed by the interns, as well as their recommendations for each rule, is attached at Appendix H. Although I have not examined all of their recommendations, it is remarkable that a small team of legal interns was able to identify existing FCC rules that no longer serve the public interest.

47 C.F.R. § 22.937
Demonstrating Financial Qualifications
Section 11 Recommendation: Repeal.

We recommend repealing this rule because the historic justification for demonstrating financial qualifications is no longer relevant under the modern competitive bidding regime.

Since the beginning of commercial cellular service, the Commission has required potential licensees to demonstrate that they have sufficient financial resources to construct a cellular system. The Commission's rationale was based on a desire to speed the build-out of these systems and not let valuable spectrum rest in the hands of entities that do not have the capital to bring the service to the market.

Under the old systems of spectrum assignment (comparative hearings and lotteries), the Commission feared under-capitalized entities would receive licenses and then be unable to construct a network in a reasonable period of time. Unlike these old systems, the current auction system does not present the same risks of a slow build-out. The auction format forces bidders to raise huge amounts of capital to purchase spectrum and, in turn, forces each winning bidder to recoup these costs quickly. The success of raising capital from private lending institutions and public stock offerings depends on the entity's plan to create a viable and profitable network as quickly as possible. This private financing creates a self-selection process where the entity with the best build-out plan will receive the greatest amount of capital and thereby be able to purchase the license.

After incurring the large amounts of debt required to buy a license, entities that are unable to build out quickly will have an incentive to transfer the spectrum license to another group in order to pay back loans or satisfy shareholders. The financial realities of an auction system do not support allowing an expensive resource like spectrum to remain fallow for any length of time.

Additionally, unlike the early 1980s, the costs of developing a cellular system are no longer speculative. Currently, two or three mobile phone service providers serve most of the country and future license holders have accurate data detailing the costs of build-out and the consumers' demands for mobile phone service. With viable pricing and build-out models, future license holders can accurately estimate costs and profit, reducing the risk of such ventures.

47 C.F.R. § 22.943
Limitations on Assignments and Transfers of Cellular Authorizations

Section 11 Recommendation: Modify.

We recommend modifying this rule, particularly subsection 22.943(b)(3). Under this provision, an applicant seeking approval for a transfer of control or assignment of a license within 3 years of receiving a new license (to provide cellular service to unserved areas) through competitive bidding must file along with its application a statement indicating that the license was obtained through competitive bidding. Further, the applicant must also file with the Commission the other documents and information set forth in 47 C.F.R. § 1.2111.

As modified, 22.943(b)(3) would read "An applicant seeking approval for a transfer or control of assignment (otherwise permitted under Chapter 1 of the Commission's Rules) of a new license within three years of receiving a new license through a competitive bidding procedure must, together with its application for transfer of control or assignment, file with the Commission the documents and information set forth in Section 1.2111 of this chapter."

Because Section 1.2111 already requires applicants seeking transfer assignment of licenses within three years of receiving it through competitive bidding to file this information, the first portion of 22.943(b)(3) is redundant and unnecessary. Although this rule may have been necessary when comparative hearings and lotteries were prevalent that is not the case today in an era where competitive bidding is the norm.

We recommend no modification of the requirement that applicants file documents required under 47 C.F.R. § 1.2111 because those rules include provisions designed to prevent unjust enrichment by transfers of licenses obtained through preferential treatment (relaxed financial requirements, bidding credits, etc.) in competitive bidding as designated entities under 47 C.F.R. 1.2110. Because we did not review 47 C.F.R. § 1.2111, we are not making any recommendations with regard to that rule, although it may be ripe for review in the year 2000 biennial review.

47 C.F.R. 22.951
Minimum Coverage Requirements
Section 11 Recommendation: Maintain.

We recommend maintaining this rule because its benefits significantly exceed its costs. This rule benefits the public interest because requiring applicants to propose a contiguous cellular geographical service area of at least 130 square kilometers ensures that legitimate applications are filed and excludes speculative applications. Repealing this rule also could create an increased administrative burden on the FCC in processing applications filed by speculators. Therefore the benefits of maintaining this rule significantly exceed its costs.

IV. PROPOSAL FOR FCC 2000 BIENNIAL REVIEW

The year 2000 is the next opportunity for the Commission to conduct a biennial review in accordance with the requirements of Subsection 11(a). Meeting those requirements, however, will require thorough planning beginning in early 1999. With this in mind, I offer the following proposal for conducting a truly comprehensive review.

First and foremost, the official 2000 biennial review must be a high-priority FCC effort involving all of the Commissioners. Indeed, as described above, Congress assigned the Section 11 responsibilities to the Commission, and only the full Commission has authority to carry out or delegate the agency's Subsection 11(a) responsibilities.

As for the timing of biennial review actions, by mid-1999, several FCC employees should be assigned to work full-time on the biennial review. In particular, I suggest that a full-time project leader and four or five full-time aides be designated to manage the day-to-day aspects of the review. Because of the broad experience and oversight authority necessary for the job, the project leader probably should be in or be assigned to the FCC's Office of Plans and Policy or Office of the General Counsel. The biennial review staff, several of whom should be familiar with

computer databases, should immediately create a database of all of the FCC rules and should propose the division of responsibility for each of the rules among the bureaus and OET.[50] Soon thereafter, each of the bureaus and OET should designate at least one fairly high level employee to serve on the Commission-wide biennial review team. Three employees from each the Common Carrier Bureau and Wireless Telecommunications Bureau should be assigned to the team. At least one of these employees from each of these bureaus should work full time on the review. The full team should be responsible for assigning the rules among the bureaus and OET by early October.

Shortly after the bureau and OET team members are designated in late July or early August, 1999, the entire team should discuss and prepare to recommend a review plan. This discussion could be informed by the suggestions in the present report. By mid-September, the team should recommend a plan for the 2000 review to the Commission and, by mid-October, the full Commission should choose such a plan.

The biennial review team also should immediately prepare and, by early September, 1999, circulate to all commissioners, a draft notice of inquiry on the appropriate construction of the Subsection 11(a)(2) "public interest." As described above, the model 1998 biennial review conducted by my staff relied on a straightforward cost-benefit analysis to determine whether a rule is or is not in the public interest: a rule cannot be in the public interest if its costs exceed its benefits. Yet, as noted in the Franks NPRM,[51] it may be difficult in some cases to quantify the

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[50] This database should be compatible with the FCC's new standard PC operating system. The 1998 model review team had to use fairly cumbersome software compatible with the FCC's current operating system.

[51] *See* footnote 41, *supra*.

costs and benefits of a particular regulation. Thus, additional means of evaluating the public interest under Subsection 11(a)(2) may be necessary.[52] The FCC's analysis also will need to take into account the state of economic competition in the relevant markets. Released by the Commission in mid-September, this notice of inquiry should have comment and reply periods that allow the team and full Commission to define the public interest under Subsection 11(a)(2) by mid-December.

Most importantly, the bureaus and OET should, beginning in early January, 2000, and ending by mid-October, 2000, conduct their rule-by-rule analyses. These analyses should be informed by petitions for review filed by outside parties before mid-August. A public notice soliciting such petitions should be issued in early January. I suggest that the FCC, as a matter of course, release petitions for Subsection 11(a) review on public notice within ten days of submission. The Commission should issue a cut-off notice, however, stating that petitions for the 2000 biennial review will not be accepted after, say, August 1, 2000, so that the review team has adequate time to place the petitions on public notice, receive comments, and factor the additional information into the review. The biennial review team should recommend Subsection 11(a)(2) determinations to the full Commission by mid-November and, in mid-December, the Commission should agree on and publish a report on its determinations.[53]

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[52] Commissioner Powell has called for a broad reassessment of the public interest standard. In a recent speech, for example, he said that ". . . it is imperative that we try to enunciate principles that will discipline the broad discretion we have held historically, and therefore assist dealmakers in the market in guessing what we will do even before we do it." Michael Powell, *Bewitched, Bothered and Bewildered*, remarks before the Federal Communications Bar Association Monthly Luncheon, October 28, 1998 <http://www.fcc.gov/Speeches/Powell/spmkp817.html> (visited Nov. 17, 1998). Articulating the public interest standard for the purposes of Subsection 11(a)(2) would neither detract from nor need await the more comprehensive analysis sought by Commissioner Powell.

[53] A complete proposed timeline for the 2000 biennial review is attached at Appendix I.

In order to ensure adequate monitoring of the official 2000 biennial review, as well as to respect the full Commission's responsibilities under Subsection 11(a), the biennial review team should provide a weekly written status report to all of the Commissioners. At least once a month, these reports should include a detailed rule-by-rule status update including a printout of the database the biennial review team uses to track its progress throughout the review.

V. CONCLUSION

As a matter of law, the Federal Communications Commission must review all of its rules relating to telecommunications service providers every two years. Although the FCC did not fully meet this obligation in 1998, the analysis herein and the model review conducted by a team of legal interns demonstrates that such an FCC review not only is required, but is eminently feasible, for the year 2000.

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Appendices

Appendix A

November 18, 1997
1998 BIENNIAL REVIEW OF FCC REGULATIONS BEGUN EARLY;
TO BE COORDINATED BY DAVID SOLOMON

FCC Chairman William E. Kennard announced today that the FCC has begun the comprehensive 1998 biennial review of telecommunications and broadcast regulations required by the Telecommunications Act of 1996.

Kennard noted that the FCC's action accelerates the Congressionally mandated biennial review requirement by beginning in 1997 rather than in 1998. In addition, the scope of this first biennial review will be broader than required by the 1996 Act.

Kennard announced that Deputy General Counsel David H. Solomon will coordinate the review, with the assistance of senior managers from the Commission's Bureaus and Offices.

In announcing early commencement of the 1998 biennial review, Kennard said, "The first biennial review is a key time for the Commission to take a serious top-to-bottom look at its rules. It gives us an opportunity to promote meaningful deregulation and streamlining where competition or other considerations warrant such action. It is also an occasion to develop legislative proposals that could lead to further deregulation and streamlining."

The Telecommunications Act of 1996 requires that, beginning in 1998 and in every even-numbered year thereafter, the FCC conduct a review of its regulations regarding the provision of telecommunications (common carrier) service and the Commission's broadcast ownership rules. The Act charges the Commission with determining whether, because of increased competition, any regulation no longer serves the public interest. Any such regulations must be repealed or modified.

Kennard pointed out, "I said during my confirmation hearing that as Chairman I would be guided by the goals of competition, community and common sense. I view the first biennial review as a critical cornerstone of my common sense agenda. Starting the review early, and making the scope broad, will help ensure that we regulate only when necessary and that we do so in a common sense manner that will not be overly burdensome to the industries we regulate."

As coordinator of the 1998 biennial review, Solomon will work closely with the FCC's Bureaus and Offices to develop a series of deregulatory and streamlining proposals. In addition, he and the review team will host public forums and take other steps to solicit ideas from the FCC Commissioners and Members of Congress, the public, and industries that the FCC regulates. The Bureau/Office proposals will be presented to the Commission for consideration this winter and next spring, with proposals for final action to be presented to the Commission next summer and fall.

- FCC -

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Appendix B

Report No. GN 98-1 **GENERAL ACTION** **February 5, 1998**

FCC STAFF PROPOSES 31 PROCEEDINGS AS PART OF 1998 BIENNIAL REGULATORY REVIEW

The Commission staff has released a list of 31 proposed proceedings to be initiated as part of the 1998 biennial regulatory review. The review is aimed at eliminating or modifying regulations that are overly burdensome or no longer serve the public interest. The list was compiled following a broad, comprehensive internal review of all existing FCC regulations and informal input from the industry and the public through, for example, recently held public forums and ongoing brown bag lunches with the practice groups of the Federal Communications Bar Association. The Commission will continue to solicit public input as the process continues.

The list, which is attached, includes a review of all broadcast ownership rules not already the subject of a pending Commission proceeding and a wide array of common carrier rules, such as the Part 32 uniform system of accounts rules, Part 41 telegraph and telephone franks rules, Part 43 reporting rules, Part 61 price cap rules, Part 62 interlocking directorate rules, Part 63 international certificate rules, Part 64 customer premises equipment bundling rules, and Part 68 equipment rules.

"We have outlined a very ambitious agenda for the Commission that should result in a substantial amount of deregulation and streamlining," said Chairman William E. Kennard. "The Commission is in a position to ensure that its first biennial regulatory review will, consistent with the congressional mandate, produce concrete results in many areas of the Commission's operations."

Section 11 of the Communications Act, as amended, requires the Commission to review all of its regulations applicable to providers of telecommunications service in every even-numbered year to determine whether the regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of the service and whether such regulations should be repealed or modified. Section 204(h) of the Telecommunications Act of 1996 also requires the Commission to review its broadcast ownership rules biennially as part of the review conducted pursuant to Section 11. In addition, as

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previously announced, the Commission has determined that the first biennial regulatory review presents an excellent opportunity for a serious top-to-bottom examination of all the Commission's regulations, not just those statutorily required to be reviewed.

The attached list of proposed proceedings is a working document that reflects Commission staff's current plans, and proceedings may be added or deleted based on further internal review or public input. Beginning February 9, 1998, members of the public interested in offering further suggestions concerning the 1998 biennial review may send their suggestions regarding proposed rule changes and an appropriate analytical framework for analyzing such proposed changes via e-mail to *biennial@fcc.gov*. The public also may send comments concerning regulations administered by the Wireless Telecommunications Bureau to *wtbforum@fcc.gov*. Also beginning this month, the Commission will have a Biennial Review Home Page on the FCC Internet site at *http://www.fcc.gov*.

In addition to those proceedings proposed to be initiated as part of the 1998 biennial regulatory review, the Commission has numerous ongoing proceedings that are consistent with the deregulatory and streamlining policy embodied in Section 11. For example, the Commission has ongoing proceedings to review and/or reconsider its rules governing jurisdictional separations procedures under Part 36, extensions of lines under Part 63, cost allocations under Part 64, and access charges under Part 69. In addition, the following broadcast ownership rules are already the subject of open proceedings: the television "duopoly" rule, which generally prohibits common ownership of two or more broadcast television stations with overlapping Grade B signal contours; the "one-to-a-market" rule, which generally prohibits common ownership of a television and radio station in the same market; and the waiver policy for the daily newspaper/radio cross-ownership rule, which generally prohibits the common ownership of a daily newspaper and radio station in the same community.

- FCC -

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PROPOSED 1998 BIENNIAL REGULATORY REVIEW
PROCEEDINGS TO BE INITIATED
(Organized by Bureau)

February 5, 1998

BUREAU	REGULATORY PROPOSAL
CSB	Elimination of Form 325. Propose eliminating Form 325.
CSB	Part 76: Pleading and Complaint Rules. Propose simplification and unification of Part 76 pleading and complaint process rules.
CSB	Part 76: Public File Requirements. Consider streamlining and consolidation of public file requirements applicable to cable television systems.
CCB	Testing New Technologies. Seek public comment on whether the Commission should implement procedures to remove or reduce, or forbear from enforcing, regulatory burdens on carriers filing for technology testing authorizations.
CCB	Computer III. In addition to addressing issues remanded by the Ninth Circuit, reexamine the nonstructural safeguards regime governing the provision of enhanced services by the BOCs and GTE and consider elimination of requirement that BOCs file Comparably Efficient Interconnection (CEI) plans. (NPRM adopted 1/29/98)
CCB	Unified Collection Administration. Propose to streamline and rationalize information and payment collection from contributors to Telecommunications Relay Service (TRS), North American Numbering Plan Administrator (NANPA), and possibly Universal Service Fund (USF).

BUREAU	REGULATORY PROPOSAL
CCB	Part 43: Automated Reporting and Management Information System (ARMIS) Reports. Propose to eliminate duplicative or unnecessary reporting requirements.
CCB	Part 32: Uniform System of Accounts (USOA). Consider whether prior approval for using certain accounts remains necessary and whether any accounts can be eliminated.
CCB	Part 61: Price Caps. Review and reorganize Part 61 price cap rules and consider adding separate section for electronic filing.
CCB	Part 68: Mutual Recognition Agreements (MRA). Implement Mutual Recognition Agreements with European Union and avoid duplicative testing and registration procedures among signatory countries.
CCB	Part 68: 56 Kbps Modems. Propose updating Part 68 rules that limit the power levels at which any device attached to the network can operate to allow use of 56 Kbps modems.
CCB	Part 64: CPE Bundling. Consider whether restrictions on bundling of telecommunications service with CPE should be eliminated.
CCB	Part 62: Interlocking Directorates. Consider whether rules regarding interlocking directorates can be repealed.
CCB	Depreciation. Consider streamlining or eliminating Commission's methods for prescribing depreciation rates.
CCB	Part 41: Telegraph and Telephone Franks. Consider eliminating rules concerning the provision of Telegraph and Telephone Franks.

BUREAU	REGULATORY PROPOSAL
CIB	Part 2, Subpart K: Revision of Radio Equipment Importation Rules. Seek comment on eliminating the requirement that persons importing Radio Frequency Devices into the U.S. file a form with the FCC, in addition to placing a copy of the form with their customs importation papers. The proposed rule change would eliminate the requirement to file with the FCC and leave only the requirement that the form accompany the customs importation papers.
IB (joint w/OMD)	Part 3: Privatization of Settlements for Maritime Mobile and Maritime Satellite Radio Accounts. Propose to amend rules concerning the administration of the U.S. Certified Accounting Authorities in the maritime mobile and maritime satellite radio services. Specifically, propose to withdraw the FCC from performing its role as a nationwide clearinghouse for settling maritime mobile and maritime satellite accounts for non-government entities. Private entities would then rely on private accounting authorities, operating under the oversight of Commission staff, to perform these functions.
IB	Part 63: Streamline Licensing Procedure for International Section 214 and Submarine Cable Landing Licenses. Propose to eliminate the requirement of prior approval for pro forma transfers of control and assignments of non-Title III licenses. Authorized entities would be required simply to file a letter of notification after the transfer or assignment has taken place.
IB	Part 63: Further International Section 214 and Cable Landing Licensing Streamlining Efforts. Develop, in conjunction with industry focus groups, further streamlining possibilities in section 214 and Cable Landing Licensing and in accounting rate modifications.

BUREAU	REGULATORY PROPOSAL
MMB (w/CSB)	Biennial Ownership Review. Conduct single ownership proceeding regarding broadcast ownership rules not subject of a pending proceeding. (Other broadcast ownership rules are being reviewed as part of ongoing proceedings that will be separately completed this year.)
MMB	Part 73: Streamlining Initiatives. Consider streamlining broadcast filing and licensing procedures.
MMB	Part 73: Technical Initiatives. Propose modifications to AM/FM technical rules and policies.
OET	Part 2, Subpart J: Private Sector Equipment Approval. Propose to further streamline the equipment authorization program by implementing the recent mutual recognition agreement with Europe and providing for private sector certification bodies (i.e., organizations that will be empowered to issue grants of equipment authorization).
OET	Part 18: RF Lighting Rules Update. Propose to deregulate RF lighting requirements to foster the development of new, more energy efficient RF lighting technologies.
OET	Parts 15 & 18: Review of Line Conducted Emission Standards. Review current Part 15 and Part 18 power line conducted emissions limits and consider whether the limits may be relaxed to reduce the cost of compliance for a wide variety of electronic equipment.
WTB	Universal Licensing System. Revise and consolidate rules governing application procedures for radio services licensed by WTB to facilitate introduction of electronic filing via the Universal Licensing System.

BUREAU	REGULATORY PROPOSAL
WTB	Part 97: Streamline Amateur Radio Service. Seek comment on amending Parts 0, 1, and 97 of FCC Rules to privatize further the administration of the Amateur Radio Services and to simplify the licensing process.
WTB	Part 101: Further Streamline Fixed Microwave Service. Propose amending Part 101 of FCC Rules to: (a) simplify the coordination process whenever possible; (b) revise conditional authority rules (§ 101.31(e)); (c) conform and consolidate the rules regarding operations in the 2450-2483.5 MHz band under Parts 101 & 90; (d) update Multiple Address Systems (MAS) rules as a result of Part 90 consolidation.
WTB	Part 90: Further Streamline Private Land Mobile Radio Service Rules. Propose amending Part 90 of FCC Rules to: (a) license the "color dot channels" and wireless microphone channels by rule; (b) extend license terms from 5 to 10 years; (c) allow public safety licensees to provide service to Federal Government entities; and (d) clarify and eliminate rules as necessary (e.g., simplify rule 90.421 and include hand-held units, eliminate rule 90.449 (responding to Notices of Violations) as largely redundant with rule 1.89).
WTB	PCIA Petition for Forbearance; Eliminate or Streamline Unnecessary and Obsolete CMRS Regulations. Address petition filed by Personal Communicatons Industry Association (PCIA) seeking forbearance from certain Title II requirements as they apply to certain commercial mobile radio service (CMRS) licensees. In addition, propose to eliminate or streamline technical and operational rules governing cellular, specialized mobile radio (SMR), and other CMRS services that are inconsistent with more flexible rules governing new wireless services, such as personal communications services (PCS).

BUREAU	REGULATORY PROPOSAL
WTB	Review of CMRS Spectrum Cap and Other CMRS Aggregation Limits and Cross-Ownership Rules. Examine possible modifications or alternatives to the 45 MHz spectrum cap currently applicable to broadband PCS, cellular, and SMR.

Appendix C

Report No. GN 98-11 GENERAL ACTION August 6, 1998

FCC ANNOUNCES SIGNIFICANT PROGRESS ON 1998 BIENNIAL REGULATORY REVIEW

The FCC announced today that it has begun 23 proceedings as part of its 1998 Biennial Regulatory Review. This number represents over two-thirds of the total number of proceedings recommended by the staff in February. Another 10 proceedings will be initiated shortly. This information was announced by Deputy General Counsel David H. Solomon in a report delivered at the FCC's monthly agenda meeting.

The 1996 Telecommunications Act requires the Commission to review its rules relating to common carriers and its broadcast ownership rules in every even-numbered year to eliminate or modify those rules that are overly burdensome or no longer serve the public interest. The 1998 review is the first such review. In November 1997 Chairman William E. Kennard, in one of his first actions as Chairman, broadened the scope of the review to include all FCC rules and directed the staff to begin the review immediately.

The specific proceedings that have been initiated, or will soon be initiated, were developed after a comprehensive internal FCC review of all Commission rules. This review included substantial public input through a series of public forums held at the Commission, meetings with practice groups of the Federal Communications Bar Association, suggestions provided in pleadings and letters filed with the Commission, suggestions sent via e-mail and other informal input. In addition, the Commissioners themselves were involved in the process, which is ongoing.

Roughly two-thirds of the initiated and planned proceedings involve common carriers. All of the Commission's operating bureaus and several Commission offices have been involved in the biennial review process. A complete list of Commission actions and contemplated actions in connection with the 1998 Biennial Regulatory Review is attached. Further information regarding these proceedings may be found on the FCC's Biennial Review Home Page at http://www.fcc.gov. Further suggestions may be submitted via e-mail to biennial@fcc.gov.

- FCC -

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August 6, 1998

1998 BIENNIAL REGULATORY REVIEW

I. PROCEEDINGS INITIATED

Telecommunications Providers (Common Carriers)

In addition to addressing issues remanded by the Ninth Circuit, reexamination of the nonstructural safeguards regime governing the provision of enhanced services by the Bell Operating Companies (BOCs) and consideration of elimination of requirement that BOCs file Comparably Efficient Interconnection (CEI) plans. *Computer III* Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of *Computer III* and ONA Safeguards and Requirements, CC Dkt Nos. 95-20 and 98-10, FNPRM, FCC 98-8 (rel. Jan. 30, 1998).

Streamline and consolidate rules governing application procedures for wireless services to facilitate introduction of electronic filing via the Universal Licensing System. Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Dkt No. 98-20, NPRM, FCC 98-25 (rel. March 19, 1998).

Streamline the equipment authorization program by implementing the recent mutual recognition agreement with Europe and providing for private equipment certification. 1998 Biennial Regulatory Review -- Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements, GEN Dkt No. 98-68, NPRM, FCC 98-92 (rel. May 18, 1998).

Removal or reduction of, or forbearance from enforcing, regulatory burdens on carriers filing for technology testing authorization. 1998 Biennial Regulatory Review -- Testing New Technology, CC Dkt No. 98-94, NOI, FCC 98-118 (rel. June 11, 1998).

Modification of accounting rules to reduce burdens on carriers. 1998 Biennial Regulatory Review -- Review of Accounting and Cost Allocation Requirements; United States Telephone Association Petition for Rulemaking, CC Dkt No. 98-81, NPRM, FCC 98-108 (rel. June 17, 1998).

In NPRM portion, considering forbearance from additional requirements regarding telephone operator services applicable to commercial mobile radio service providers (CMRS) and, more generally, forbearance from other statutory and regulatory provisions applicable to CMRS providers. Personal Communications Industry Association's Broadband Personal Communications Services Alliances' Petition for Forbearance For Broadband Personal Communications Services; Biennial Regulatory Review - Elimination or Streamlining of Unnecessary and Obsolete CMRS Regulations; Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Dkt No. 98-100, NPRM, FCC 98-134 (rel. July 2, 1998).

Provide for a blanket section 214 authorization for international service to destinations where the carrier has no affiliate; eliminate prior review of pro forma transfers of control and assignments of international section 214 authorizations; streamline and simplify rules applicable to international service authorizations and submarine cable landing licenses. 1998 Biennial Regulatory Review -- Review of International Common Carrier Regulations, IB Dkt No. 98-118, NPRM, FCC 98-149 (rel. July 14, 1998).

Privatize the administration of international accounting settlements in the maritime mobile and maritime satellite radio services. 1998 Biennial Regulatory Review -- Review of Accounts Settlement in the Maritime Mobile and Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications, IB Dkt No. 98-96, NPRM, FCC 98-123 (rel. July 17, 1998).

Elimination of duplicative or unnecessary common carrier reporting requirements. 1998 Biennial Regulatory Review -- Review of ARMIS Reporting Requirements, CC Dkt No. 98-117, NPRM, FCC 98-147 (rel. July 17, 1998).

Elimination of rules concerning the provision of telegraph and telephone franks. 1998 Biennial Regulatory Review -- Elimination of Part 41 Telegraph and Telephone Franks, CC Dkt No. 98-119, NPRM, FCC 98-152 (rel. July 21, 1998).

Simplification of Part 61 tariffing rules. Biennial Regulatory Review -- Part 61 of the Commission's Rules and Related Tariffing Requirements, CC Dkt No. 98-131, NPRM, FCC 98-164 (rel. July 24, 1998).

Elimination or streamlining of various rules prescribing depreciation rates for common carriers. 1998 Biennial Regulatory Review -- Review of Depreciation Requirements for Incumbent Local Exchange Carriers, CC Dkt. No. 98-137, NPRM, FCC 98-170 (adopted July 22, 1998).

Deregulation of international settlement policies. 1998 Biennial Regulatory Review -- Reform of the International Settlements Policy and Associated Filing Requirements, IB Dkt. No. 98- , NPRM, FCC 98- (adopted August 6, 1998).

Broadcast Ownership

Broad inquiry into broadcast ownership rules not the subject of other pending proceedings. 1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Dkt No. 98-35, NOI, FCC 98-37 (rel. Mar. 13, 1998).

Other

Streamline broadcast filing and licensing procedures. 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules and Processes, MM Dkt No. 98-43, NPRM, FCC 98-57 (rel. Apr. 3, 1998).

Deregulate radiofrequency (RF) lighting requirements to foster the development of new, more energy efficient RF lighting technologies. 1998 Biennial Regulatory Review -- Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices, ET Dkt No. 98-42, NPRM, FCC 98-53 (rel. Apr. 9, 1998).

Simplify and unify Part 76 cable pleading and complaint process rules. 1998 Biennial Regulatory Review -- Part 76 - Cable Television Service Pleading and Complaint Rules, CS Dkt No. 98-54, NPRM, FCC 98-68 (rel. April 22, 1998).

Modify or eliminate Form 325, annual cable television report. 1998 Biennial Regulatory Review -- "Annual Report of Cable Television System," Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules, CS Dkt No. 98-61, NPRM, FCC 98-79 (rel. Apr. 30, 1998).

Review current Part 15 and Part 18 power line conducted emissions limits and consider whether the limits may be relaxed to reduce the cost of compliance for a wide variety of electronic equipment. 1998 Biennial Regulatory Review -- Conducted Emissions Limits Below 30 MHz for Equipment Regulated Under Parts 15 and 18 of the Commission's Rules, ET Dkt No. 98-80, NOI, FCC 98-102 (rel. June 8, 1998).

Streamline AM/FM technical rules and policies. 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, MM Dkt No. 98-93, NPRM, FCC 98-117 (rel. June 15, 1998).

Provide for electronic filing for assignment and change of radio and TV call signs. 1998 Biennial Regulatory Review -- Amendment of Part 73 and Part 74 Relating to Call Sign Assignments for Broadcast Stations, MM Dkt No. 98-98, NPRM, FCC 98-130 (rel. June 30, 1998).

Streamline and consolidate public file requirements applicable to cable television systems. 1998 Biennial Regulatory Review -- Streamlining of Cable Television Services Part 76 Public File and Notice Requirements, CS Dkt No. 98-132, NPRM, FCC 98-159 (rel. July 20, 1998).

Streamline Part 97 amateur rules. 1998 Biennial Regulatory Review -- Amendment of Part 97 of the Commission's Amateur Service Rules, WT Dck No. 98-143, NPRM, FCC 98-183 (adopted July 29, 1998).

II. ORDERS ADOPTED

Amends cable and broadcast annual employment report due dates to streamline and simplify filing. 1998 Biennial Regulatory Review -- Amendment of Sections 73.3612 and 76.77 of the Commission's Rules Concerning Filing Dates for the Commission's Equal Employment Opportunity Annual Employment Reports, MO&O, FCC 98-39 (rel. Mar. 16, 1998).

III. PROCEEDINGS PENDING OR OTHERWISE PLANNED

Telecommunications Providers (Common Carriers)

Modify Part 68 rules that limit the power levels at which any device attached to the network can operate to allow use of 56 Kbps modems.

Modify or eliminate Part 64 restrictions on bundling of telecommunications service with customer premises equipment.

Repeal of Part 62 rules regarding interlocking directorates.

Streamline and rationalize information and payment collection from contributors to Telecommunications Relay Service, North American Numbering Plan Administration, Universal Service, and Local Number Portability Administration funds.

Seek comment on various deregulatory proposals of SBC Communications, Inc. not already subject to other biennial review proceedings.

Further streamline part 68 equipment rules.

Simplify and streamline Part 101 common carrier microwave rules.

Modifications or alternatives to the 45 MHz CMRS spectrum cap and other CMRS aggregation limits and cross-ownership rules.

Other

Streamline Part 90 private land mobile rules.

Streamline the Gettysburg reference facilities so that electronic filing and electronic access can substitute for the current method of written filings/access.

Appendix D

OPP Framework

The OPP Framework was published by the Commission as follows:

"In connection with [the 1998 biennial] review, the OPP/Chief Economist/ Competition Division of OGC team developed the following analytical framework, which it used in connection with its review and made available to the other Bureaus and OET for their use:

(i) Is the original or present purpose of the regulation still valid? If not, then why shouldn't the regulation be eliminated?

(ii) If a valid purpose for the regulation exists, how well does the regulation achieve the purpose? If it does not achieve its purpose well, then why shouldn't the regulation be eliminated?

(iii) Even if a regulation achieves its purpose, do the burdens it creates outweigh its advantages? What are the "Pros" of the regulation? If the regulation is designed to protect against the exercise of market power, is there meaningful economic competition? If there is, then why doesn't that eliminate the need for the regulation? What are the "Cons" of the regulation? Cons can include the direct costs and burdens on companies, regulators, customers, and taxpayers and the indirect costs of (a) preventing or slowing a firm from introducing and pricing new services or changing rates; (b) discouraging innovation; (c) forcing competitors to give each other advance notice of their plans; or (d) slowing the ability to respond quickly and flexibly to competition. Do the Pros clearly outweigh the Cons?

(iv) Even if the Pros outweigh the Cons, is there a less burdensome alternative that will produce similar benefits? and

(v) Does the regulation overlap, interfere, or conflict with other regulations such that modification is warranted?"

1998 Biennial Regulatory Review -- Petition for Section 11 Biennial Review filed by SBC Communications, Inc., southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CC Docket No. 98-177, *Notice of Proposed Rulemaking* (released Nov. 24, 1998), paragraph 4 (footnote omitted).

Appendix E

Separate Statement of Commissioner Harold W. Furchtgott-Roth
In re: Notice of Inquiry
1998 Biennial Regulatory Review -- Testing New Technology

I support adoption of this Notice of Inquiry. In my view, any reduction of unnecessary regulatory burdens is beneficial. To that extent, this item is good and I am all for it. In particular, I applaud the Common Carrier Bureau for having produced an item so clearly in the deregulatory spirit of Section 11 of the Communications Act. This item exemplifies how the FCC's power under this section can be used for the benefit of consumers and industry. It should not, however, be mistaken for complete compliance with Section 11.

As I have explained previously, the FCC is not planning to "review ***all*** regulations issued under this Act . . . that apply to the operations or activities of any provider of telecommunications service," as required under Subsection 11(a) in 1998 (emphasis added). *See generally 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements*, 12 FCC Rcd __ (Jan. 29, 1998). Nor has the Commission issued general principles to guide our "public interest" analysis and decision-making process across the wide range of FCC regulations.

In one important respect, however, the FCC's current efforts are more ambitious and difficult than I believe are required by the Communications Act. Subsection 11(a) -- "Biennial Review" -- requires only that the Commission "***determine*** whether any such regulation is no longer necessary in the public interest" (emphasis added). It is pursuant to Subsection 11(b) -- "Effect of Determination" -- that regulations determined to be no longer in the public interest must be repealed or modified. Thus, the repeal or modification of our rules, which requires notice and comment rule making proceedings, need not be accomplished during the year of the biennial review. Yet the Commission plans to complete roughly thirty such proceedings this year.

I encourage parties to participate in these thirty rule making proceedings. I also suggest that parties submit to the Commission -- either informally or as a formal filing -- specific suggestions of rules we might determine this year to be no longer necessary in the public interest as well as ideas for a thorough review of all our rules pursuant to Subsection 11(a).

* * * * * * *

Appendix F

1998 MODEL REVIEW TEAM

The 1998 model review was performed by a dedicated team of law students serving as legal interns in my office. I greatly appreciate their work on the model review as well as their help with a wide variety of FCC issues. I am particularly grateful to Anna Weinroth, who served as my Senior Legal Intern. In addition to being a full participant in the model review, she was the organizer and facilitator of the effort and the principal contact with me and my permanent staff.

The intern team and their respective law schools were as follows:

Anna Weinroth (Senior Legal Intern, George Mason)

Courtney Dow (Legal Intern, George Mason)

John Evanoff (Legal Intern, American)

Tom Fatouros (Legal Intern, George Mason)

Dennis Johnson (Legal Intern, George Mason)

Tom Kemp (Legal Intern, Mercer)

Rebecca McElfresh (Legal Intern, William and Mary)

Lorenzo McRae (Legal Intern, Howard)

Aimee Meacham (Legal Intern, American)

Sawa Nagano (Legal Intern, Penn State)

Nancy Vizer (Legal Intern, George Mason)

* * * * * * *

Appendix G

Example Record from Model Review Database

Rule Number: 47 CFR 22.941

Main, and Sub Titles:	Title 47, Chapter I, Subchapter B, Part 22, Subpart H, Cellular Radiotelephone Service.
Rule Title:	System Identification Numbers.
Rule Description:	Assignment of system identification numbers (SIDs).
§11 Recommendation:	We recommend the repeal of this rule because the rule is no longer in the public interest The Commission should repeal this rule because the costs significantly exceed the benefits. The Commission recognizes that requiring cellular providers to file a notification with the Commission whenever there is a change in SIDs is unnecessary and administratively inefficient. There are no public interest issues involved in the assignment of SID codes, and there is no particular reason that SID codes must be a term of cellular authorizations. See 76 RR 2d at 88; see Public Notice, WIRELESS BUREAU SEEKS COMMENT ON JULY 31, 1998 LETTER FROM PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION PROPOSING STREAMLINING OF WIRELESS REGULATIONS, DA 98-1687 Released: August 21, 1998. Therefore the system identification number (SID) process should be privatized.
Rule Text:	Sec. 22. 941 System Identification Numbers. System identification numbers (SIDs) are 15 bit binary number assigners to cellular systems. SIDs are transmitted by the cellular systems so that cellular mobile stations can determine whether the system through which they are communicating is a system to which they subscribe, or whether they are considered by the system to be roamers. (a) The FCC assigns one SID to each cellular system on its initial authorization. Cellular systems may transmit only their assigned SID(s) and/or the SIDs assigned to other cellular systems. A cellular system may transmit the SID assigned to another cellular system only if the licensee of that system concurs with such use of its assigned SID. b. Licensees must notify the FCC (FCC Form 489) if their cellular systems transmit SIDs assigned to other cellular systems. The notification must indicate the concurrence of the licensee(s) of such other systems with this use of their assigned SID(s). The notification must be mailed or delivered to the filing place (see S 22.106) no later than 15 days after the system begins transmitting the SID(s). (c) Licensees may request that an additional (previously unassigned) SID be assigned to their system by filing an application for minor modification of station (FCC Form 600).
Adoption Date:	8/2/94
FCC Record Cite:	9 FCC Rcd 6513 (1994).

BENEFITS

Historic Per FCC: The Commission found that it was necessary that each system have a SID code that is unique throughout the country in order for mobile subscriber equipment to be able to tell whether it is in communication with the system to which it is a subscriber, or alternatively, whether it is considered to be a roamer. 76 RR 2d at 87. However, licensees frequently changed the initially assigned SID code in order to consolidate territory or to implement "home roaming" agreements. 76 RR 2d 87. According to the Commission, by adopting this rule, system operators could change their SID code at will, and would be required only to notify the Commission by filing the FCC Form 489 that the SID code changed. 76 RR 2d at 87. The procedure required a SID code change to be handled in the same way as any other minor modification. 76 RR 2d at 87.

Monetary Per FCC:

Current Per FCC: No present benefits have been identified by the FCC for maintaining 22.941.

COSTS

Historic Per FCC: According to the Commission filing a Form 489 would impose a processing fee for a service that is already provided for free. 76 RR 2d at 87. The Commission also found that there are no public interest issues involved in the assignment of SID codes. Therefore there is no particular reason that SID codes must be a term of cellular authorizations. 76 RR 2d at 88. The Commission suggested that it may be more efficient and less burdensome if a private national cellular industry organization were to assign these codes outside of the FCC licensing process. 76 RR 2d at 88.

Monetary Per FCC:

Current Per FCC: The Commission recently recognized that it continues to require SID information to be filed and assigned by it rather than permitting the industry (as it does for PCS) to handle the process. The Commission asserted that this requirement is unnecessary and inefficient. The Commission concluded that requiring cellular providers to file a notification with the Commission whenever there is a change in SIDs could be much more expeditiously handled by the industry. Public Notice, WIRELESS BUREAU SEEKS COMMENT ON JULY 31, 1998 LETTER FROM PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION PROPOSING STREAMLINING OF WIRELESS REGULATIONS, DA 98-1687 Released: August 21, 1998; See also 76 RR 2d at 88 (seeking comments on whether it would be more efficient and less burdensome if a private national cellular industry organization were to assign these codes outside of the FCC licensing process).

OGC Action:

Contacts: Roger Noel, Mike Ferrante

Researchers: JE

Appendix H

1998 Model Review Team

Summary of Recommendations

November 11, 1998

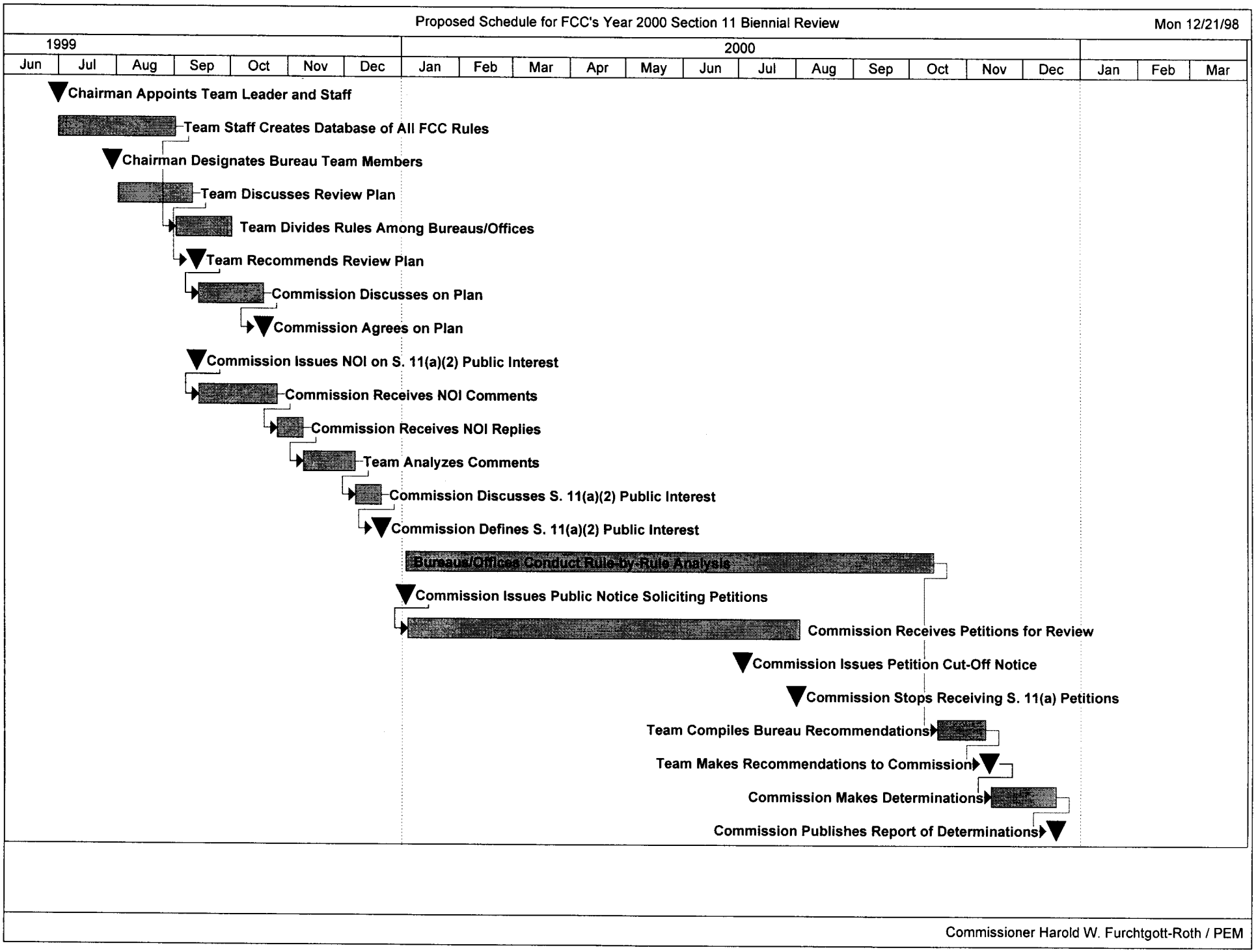
Recommendation: Repeal	
22.903	Conditions Applicable to Former BOCs
22.937	Demonstration of Financial Qualifications
22.941	System Identification Numbers
32.2000(g)	Depreciation Accounting
Part 41	Telegraph and Telephone Franks
Part 43	Annual Reports of Carriers and Certain Affiliates
65.101	Initiation of Unitary Rate of Return Prescription Proceedings
65.820(d)	Cash Working Capital

Recommendation: Modify	
22.901	Cellular Service Requirements and Limitations
22.943	Limitations on Assignments and Transfers of Cellular Authorizations
22.953	Content and Form of Applications

Recommendation: Maintain	
22.905	Channels for Cellular Service
22.907	Coordination of Channel Usage
22.909	Cellular Markets
22.911	Cellular Geographic Service Area
22.912	Service Area Boundary Extensions
22.913	Effective Radiated Power Limits
22.915	Modulation Requirements
22.917	Emission Limitations for Cellular

22.919	Electronic Serial Numbers
22.923	Cellular System Configuration
22.925	Prohibition on Airborne Operation of Cellular Telephones
22.927	Responsibility for Mobile Stations
22.929	Application Requirements for the Cellular Radiotelephone Service
22.933	Cellular System Compatibility Requirements
22.935	Procedures for Comparative Renewal Proceedings
22.936	Dismissal of Application in Cellular Renewal Proceedings
22.939	Site Availability Requirements for Applications Competing with Cellular Renewal
22.940	Criteria for Comparative Cellular Renewal Proceedings
22.942	Limitations on Interests in Licenses for Both Channel Blocks in an Area
22.944	Transfers of Interests in Applications
22.945	Interests in Multiple Applications
22.946	Service Commencement and Construction Periods for Cellular Systems
22.947	Five-Year Buildout Period
22.949(a)(b)	Underserved Area Licensing Process
22.951	Minimum Coverage Requirement
22.955	Canadian Condition
22.957	Mexican Condition
22.960	Cellular Unserved Area Telephone Licenses Subject to Competitive Bidding
22.961	Competitive Bidding Design for Cellular Unserved Area Radiotelephone Licensing
22.962	Competitive Bidding Mechanisms
22.963	Withdrawal, Default and Disqualification Payment
22.964	Bidding Application (FCC Form 175)
22.965	Submission of Upfront Payments and Down Payments
22.966	Long-Form Applications
22.967	License Grant, Denial, Default, and Disqualifications
Part 42	Preservation of Records of Communication Common Carriers
Part 43	Reports of Communication Common Carriers and Certain Affiliates

Appendix I


Proposed Schedule for FCC's Year 2000 Section 11 Biennial Review
Mon 12/21/98
1999
2000
Jun
Jul
Aug
Sep
Oct
Nov
Dec
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
Jan
Feb
Mar
Chairman Appoints Team Leader and Staff
Team Staff Creates Database of All FCC Rules
Chairman Designates Bureau Team Members
Team Discusses Review Plan
Team Divides Rules Among Bureaus/Offices
Team Recommends Review Plan
Commission Discusses on Plan
Commission Agrees on Plan
Commission Issues NOI on S. 11(a)(2) Public Interest
Commission Receives NOI Comments
Commission Receives NOI Replies
Team Analyzes Comments
Commission Discusses S. 11(a)(2) Public Interest
Commission Defines S. 11(a)(2) Public Interest
Bureaus/Offices Conduct Rule-by-Rule Analysis
Commission Issues Public Notice Soliciting Petitions
Commission Receives Petitions for Review
Commission Issues Petition Cut-Off Notice
Commission Stops Receiving S. 11(a) Petitions
Team Compiles Bureau Recommendations
Team Makes Recommendations to Commission
Commission Makes Determinations
Commission Publishes Report of Determinations
Commissioner Harold W. Furchtgott-Roth / PEM